

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs January 23, 2007

**BRUCE ALAN LITTLETON v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Humphreys County**  
**No. 9805-A     Robert E. Burch, Judge**

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**No. M2006-01675-CCA-R3-CO - filed March 14, 2007**

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The Petitioner, Bruce Alan Littleton, filed a petition for “writ of error coram nobis and/or motion to challenge the legality of guilty plea.” The trial court summarily denied relief on the basis that the petition was time-barred. The issues raised by the Petitioner are not appropriately addressed in a petition for writ of error coram nobis and, insofar as the pleading may be considered a petition for post-conviction relief, the trial court properly determined that the statute of limitations had expired. The judgment of the Humphreys County Circuit Court summarily dismissing the petition is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Bruce Alan Littleton, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Brian Clay Johnson, Assistant Attorney General; and Dan M. Alsobrooks, District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual Background**

On February 7, 2006, the Petitioner filed a petition for “writ of error coram nobis and/or motion to challenge the legality of guilty plea.” According to the petition, the Petitioner entered a “best interest” guilty plea to second degree murder on October 26, 2001, and for this conviction, he received a sentence of twenty years to be served at 100%. The petition further asserted that this twenty-year sentence was to be served concurrently with a federal sentence of 150 months and that the Petitioner was in federal custody.

In his petition, the Petitioner frames the argument as “whether Petitioner’s guilty plea sufficed the statutory dictates as provided in Rule 11 of the Tennessee Rules of Criminal Procedure.” Specifically, he contends that “his plea was the result of duress, coercion, and a misunderstanding

to constitute a knowingly and intelligent waiver of his constitutional rights.” He implies that the trial court did not address him directly during the guilty plea hearing. The Petitioner further claims that it was “never his sole intention” to plead guilty and that he is “innocent of the charged offense[s] . . . .” Finally, he asserts that, in addition to the “circumstances surrounding the alleged acts[s] of the offense[,]” his “reluctant decision” to plead guilty was based upon the “pressure . . . he received from his family, friends and other relatives to accept a sentence of twenty years” coupled with “the conditions of his confinement . . . .” He states, in conclusion, that he “is not challenging the constitutionality of the conviction” but is only asking for a modified sentence equal to the federal sentence of 150 months.

In its February 21, 2006 order summarily dismissing the petition, the trial court stated that the “substance” of the petition revealed it was, “in actuality,” a petition for post-conviction relief. The trial court then determined that the Petitioner failed to file his petition within the one-year statute of limitations for post-conviction relief. The trial court further concluded that, if the petition were treated as seeking coram nobis relief, it was likewise time-barred and the Petitioner had failed to demonstrate that due process required tolling of the statute of limitations.

It is from the order of dismissal that the Petitioner appeals. In his notice of appeal, the Petitioner asserts that due process requires tolling of the limitations period because his attorney and the trial court “deprived him of the right to appeal his sentence of conviction.” He further states that the sentencing court “never fully admonished him in the Court’s colloquy of the adverse effects that his plea would have in any subsequent or later convictions, rendering the condition[s] of his plea unintelligent, unknowing and in violation of his equal protection[s] of due process.”

On appeal, the Petitioner phrases the issue as he did in his petition—a violation of the advice lityany required by Tennessee Rule of Criminal Procedure 11. He also states in his brief that “[t]here was no appeal taken as it was part of the plea agreement not to.”

### **ANALYSIS**

A writ of error coram nobis is available to a defendant in a criminal prosecution. Tennessee Code Annotated section 40-26-105 provides, in pertinent part:

(b) The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.

(c) The issue shall be tried by the court without the intervention of a jury, and if the decision be in favor of the petitioner, the judgment complained of shall be set aside and the defendant shall be granted a new trial in that cause.

Tenn. Code Ann. § 40-26-105(b), (c).

To establish that he is entitled to a new trial, the Petitioner must show the following: (a) the grounds and the nature of the newly discovered evidence; (b) why the admissibility of the newly discovered evidence may have resulted in a different judgment if the evidence had been admitted at the previous trial; (c) that the Petitioner was without fault in failing to present the newly discovered evidence at the appropriate time; and (d) the relief sought. State v. Hart, 911 S.W.2d 371, 374-75 (Tenn. Crim. App. 1995).

The grounds for seeking a petition for writ of error coram nobis are not limited to specific categories, as are the grounds for reopening a post-conviction petition. Coram nobis claims may be based upon any “newly discovered evidence relating to matters litigated at the trial” so long as the petitioner also establishes that the petitioner was “without fault” in failing to present the evidence at the proper time. Coram nobis claims therefore are singularly fact-intensive. Unlike motions to reopen, coram nobis claims are not easily resolved on the face of the petition and often require a hearing.

Harris v. State, 102 S.W.3d 587, 592-93 (Tenn. 2003).

The statute of limitations for seeking a writ of error coram nobis is one year from the date the judgment becomes final in the trial court. Tenn. Code Ann. §§ 27-7-103, 40-26-105; State v. Mixon, 983 S.W.2d 661, 671 (Tenn. 1999). In this case, the Petitioner pled guilty in October of 2001. A judgment becomes final, for purposes of coram nobis relief, thirty days after the entry of the judgment in the trial court if no post-trial motion is filed. Mixon, 983 S.W.2d at 670. The Petitioner in this case did not file his petition for writ of error coram nobis until February of 2006. The trial court summarily dismissed the petition, finding that the petition was filed outside of the one-year statute of limitations applicable to coram nobis proceedings and that there were no facts apparent from the petition “which would allow the tolling of the statute for due process purposes . . . .”

We conclude that the trial court erred by summarily dismissing the petition on the basis that it was time-barred because “the statute of limitations [applicable to writs of error coram nobis] is an affirmative defense which must be specifically plead or is deemed waived.” Newsome v. State, 995 S.W.2d 129, 133 n.5 (Tenn. Crim. App. 1998). “Although coram nobis claims also are governed by a one-year statute of limitations, the State bears the burden of raising the bar of the statute of limitations as an affirmative defense.” Harris, 102 S.W.3d at 593 (citing Sands v. State, 903 S.W.2d 297, 299 (Tenn. 1995)). The record before this Court contains no pleading filed by the State in

response to the petition. The affirmative defense of the statute of limitations was not properly raised, and the trial court erred by relying on this defense in respect to the Petitioner's claim for relief on the ground of error coram nobis.<sup>1</sup>

Nonetheless, summary dismissal was proper because the petition fails to allege that newly discovered evidence exists that would warrant relief under a writ of error coram nobis. "The [coram nobis] proceeding is confined to errors outside the record and to matters which were not and could not have been litigated at trial, the motion for new trial, appeal, or upon post-conviction petition." Kenneth C. Stomm v. State, No. 03C01-9110-CR-00342, 1992 WL 97081, at \*1 (Tenn. Crim. App., Knoxville, May 12, 1992); see also Tenn. Code Ann. § 40-26-105.

Additionally, it is well settled that a trial court is not bound by the title of the pleading but has the discretion to treat the pleading according to the relief sought. Norton v. Everhart, 895 S.W.2d 317, 319 (Tenn. 1995). We agree with the trial court that the pleading alleges grounds which are generally appropriate for a petition for post-conviction relief. See Tenn. Code Ann. §§ 40-30-101 to -122.

Even if we treat the petition as one for post-conviction relief, the Petitioner is not entitled to a hearing. The one-year statute of limitations for filing a petition for post-conviction relief has expired. See id. § -102(a). The pleading does not allege any grounds which would provide an exception to the statute of limitations. See id. at (b). The State's failure to file a responsive pleading asserting the statute of limitations defense does not inure to the Petitioner's benefit in the context of a post-conviction proceeding. See State v. Nix, 40 S.W.3d 459, 464 (Tenn. 2001) (recognizing that, for petitions filed after May 10, 1995, the statute of limitations period is an element of the right to file a post-conviction petition and is not an affirmative defense that must be asserted by the State). Moreover, the facts of this case do not mandate that the limitations period be tolled based upon due process considerations. See Burford v. State, 845 S.W.2d 204, 208-09 (Tenn. 1992). The Petitioner offers no explanation as to why it was impossible for him to timely file his petition. Accordingly, insofar as the Petitioner's pleading may be considered as a petition for post-conviction relief, it was properly dismissed as time-barred.

### CONCLUSION

In accordance with the foregoing, we conclude that the issues raised by the Petitioner are not proper grounds for coram nobis relief and that, if the petition is considered as one seeking post-conviction relief, it is barred by the one-year statute of limitations. The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

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<sup>1</sup> We note that the trial court summarily dismissed the petition prior to the filing of a responsive pleading.